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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. [redacted]68

EUSEBIUS JAMES BIGGS,
Petitioner,

vs.

THE CITY OF CHICAGO, MARTIN H. KENNELLY, OSCAR E. HEWITT, and JOHN J. MORTIMER,
Respondents.

Petition for Writ of Certiorari to the Illinois Supreme Court or the Appellate Court, First District of Illinois.

PETITION FOR WRIT OF CERTIORARI.

E. J. BIGGS, *petitioner, pro se.*

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PETITION FOR WRIT OF CERTIORARI.

To The Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Eusebius James Biggs prays a writ of certiorari to review the decision of the Illinois Supreme Court, given on March 11, 1953, denying this petitioner the right to Appeal from the decision given by the Appellate Court First District given on September 23, 1952, or in the alternate the petitioner prays that certiorari be granted to review the decision of the Appellate Court First District.

OPINION BELOW.

The first opinion in this same case was written and is reported in 411 Ill. 566, and the opinion of the Appellate Court First District is stated on pages 19 and 22 of the record.

JURISDICTION.

The jurisdiction by appeal is conferred by Title 28, United States Code, section 2101 (c). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment, *Herb* v. *Pitcairn* (324 U. S. 117 (1945), *Hooven and Allison* v. *Evatt* (324 U. S. 652 (1945), *Craig* v. *Harney,* (331 U. S. 367), *Central Union* v. *Edwardsville* (269 U. S. 140), *Parker* v. *Illinois* (333 U. S. 571), *Chesapeake and Ohio Ry. Co.* v. *Kuhn* (284 U. S. 44), *Chicago & E. I. Ry.* v. *Industrial Commission of Illinois* (284 U. S. 296), and as the question here is, when the lower court agrees with the respondents that ordinances and statutes violate the 14th Amendment, but as they are not being enforced, there is nothing before the Court, when the Supreme and Appellate Courts of Illinois have been told that they are being enforced by both appellant and appellee by briefs and oral argument, and the petitioner is out of business because they are being enforced, which the respondents admit, and the Illinois Supreme Court is permitting this petitioner to be deprived of his livelihood by refusing to issue an injunction now, and sent this cause to a court without jurisdiction, where they can not rule on the constitutional questions, raised in the pleadings, who ignored the petitioner's Brief the Petitioner contends that, they are violating Art. II, Section 19 of the Constitution of the State of Illinois, and Title 8, Chapter 3, Section 41 U. S. C. A. and probably Section 47-2 and 3 of the same chapter, and this Court is the only Court who can correct the illegal acts of the three levels of the Illinois Courts.

QUESTIONS PRESENTED.

When the respondents admit that ordinances and state statutes governing plumbing licensing and permits violate the 14th Amendment to the Constitution of the United States and sections of the Illinois Constitution, but allege the questions are moot because the ordinances do not legally exist, and therefore the Court can not grant relief, and the Court agrees with the respondents, has the Court passed on the constitutionality of the ordinances and statutes by agreeing that they are unconstitutional?

As the ordinances and the statutes then and now are being enforced, (although the Statute was declared in violation of the 14th Amendment in January 1953,) and a fraud had been intentionally perpetrated on the Courts by the respondents through their counsel, as they have done on other Courts, to keep this petitioner from operating his businesses; can the Court award a sum of $500.00 per working day as damages for contempt of court, as actual damages caused to this petitioner by these defendants, who through the illegal acts of their counsel and the use of illegal ordinances, have actually cost this petitioner in lost profits and salary the sum of approximately $600,000.00, and which on the basis of the growth of his business for the years from 1945 to 1948 should have been approximately $800,000.00; to which could be added triple damages; when the respondents and the Courts have admitted that the ordinances are, and were, used to maintain a monopoly for the Master Plumbers illegally licensed by the City of Chicago?

The respondents having admitted the Illinois Plumbing License Law in force and effect as of July 26, 1951 violates the 14th Amendment, by their motion to strike, and

a lower court having so held in January of 1953 is the Supreme Court of Illinois in violation of the same amendment because it refused to issue an injunction to stop the statute from being enforced so that this petitioner can attempt to get back in business?

Can the Corporation Counsel of a city use technicalities real and imaginary to keep an illegal ordinance in force, which is being used by one group of citizens to destroy the business of another citizen of the same city, and not be in violation of the 14th Amendment, when he knows, or should know, that the identical language which makes the ordinances has been declared unconstitutional by the Illinois Supreme Court as of November, 1950, by lower courts in the spring of 1949, and January of 1953.

When a litigant seeks to enjoin the use of an illegal statute can the Illinois Supreme Court and the Illinois Appellate Court, and the lower Court, rule that the complaint as written is a petition for writ of mandamus to obtain a master plumber's license when the prayer of the appellant seeks injunctive relief only?

Having done the above are all the Courts violating the 14th amendment?

When the Supreme Court of Illinois is operating in violation of Art. II, Sections 19 and 20 of the State Constitution, under a policy which contravenes and is obnoxious to the Constitution of the United States, in particular as to the 14th Amendment, in that they insist that the plaintiff's pleadings and presentation be perfect before they will rule on the constitutionality of a statute or ordinance, that they can find out is in violation of the Federal Constitution by reading it, so that the statute is used year after year by the criminals for whom it was enacted, can and will this Court change the policy of the Court so that all the citizens receive protection from

the continued enactment of the same statute written to perpetrate a monopoly for the Journeymen Plumbers Local in Chicago who dominate and say who can be master plumbers in Chicago, which has been done for 50 years?

When a city ordinance conflicts with a state statute, which automatically makes the ordinance null and void, when the lower court is prejudiced and will not let the case be tried, and an appeal is made to the Illinois Supreme Court, can that Court refuse to accept jurisdiction and transfer it to the Appellate Court, where that Court, basing their opinion on the fact that the ordinance is legal, try and convict the litigant of violating the ordinance because it conflicts with the state statute which says the litigant can be the agent for a plumbing corporation, and having objected to being criminally libelled by the Appellate Court because the Appellate Court disregards the Constitution of the United States, can the Supreme Court hold the litigant in contempt of Court and strike his Brief so that this item of securing recognition as an agent of a plumbing corporation can go on forever without end, or will this Court estop the illegal merry-go-round maintained by the Illinois Supreme Court, that is depriving this petitioner of a right to earn a livelihood in a manner of his own choosing, which is guaranteed by the 14th Amendment?

When a State confers authority on a municipality to write legislation in violation of the 14th Amendment, and makes it mandatory to so write it, can the municipality be enjoined from writing it?

When the previous question is raised in a pleading as an allegation in the lower court, in briefs in the Appellate Court and the Supreme Court, can all the Courts ignore the question, and not be violating the 14th Amendment?

STATUTES INVOLVED.

14th Amendment to the Constitution of the United States.

Title 8, Chapter 3, Section 41 U. S. C. A.

The Illinois Plumbing License Law of 1951.

(Chapter 111½, Sections 116.3 to 116.35 inclusive Smith-Hurd Statutes of Illinois.)

Art. II, Sections 19 and 20 of the Constitution of 1870 of Illinois.

Chapters 162, 83, 82 and others of the Municipal Code of Chicago which make the so-called Chicago Plumbing Code.

STATEMENT OF THE CASE.

In making motions to strike and in their Briefs the respondents have for all intents and purposes admitted that:

For the past fifty years and as of today, the City of Chicago, with ordinances which violate the 14th Amendment to the Constitution of the United States (which hereinafter and heretofore has been and will be referred to only as the 14th amendment) and without ordinances at times, has allowed the local plumbers' union affiliated with the American Federation of Labor to dictate who shall or shall not be a master plumber. This is accomplished by the use of an application blank that the City of Chicago furnishes, as called for by the ordinance which must be filled out and that application blank has two places to be filled in by master plumbers licensed in Chicago or in Illinois at some times, wherein the master plumber certifies that he has a personal knowledge of the applicant's ability as a journeyman plumber. Thus, if an appli-

cant wants to be a master plumber he can only be one with the consent of his competitors who prefer not to sign the application to profit thereby, and in particular if the local union expresses a desire to keep the applicant out of the plumbing business as he will not acquiesce to the monopolistic policies they promulgate and foster, through these ordinances.

The law that permitted this operation in violation of the 14th amendment, which was rewritten in 1935, and amended in 1939 was declared illegal in 1950, and the petitioner operated as a master plumber in Illinois except Chicago. That city still enforced the illegal statute against the petitioner, and so he attacked the constitutionality of the amendments to the Municipal Code of Chicago, and the courts refused to follow their own rules and delayed hearings until a new plumbing license law was enacted by the State which stated that the ordinances that permitted the City of Chicago to license master plumbers were null and void.

The same plumbing license law re-enacted the illegal licensing provisions all over the State including Chicago, and as the City of Chicago professed to be enforcing the new Illinois Plumbing license law, (which was untrue as they were enforcing the illegal ordinances under attack at all times), the petitioner sought an injunction stopping the enforcement of the Illinois Plumbing License Law of 1951 by the City of Chicago, and an injunction to stop them from writing an ordinance, which had to be in conformity with the illegal State License law, as the Statute so provided.

ERRORS RELIED ON FOR REVERSAL.

The Supreme Court of Illinois sent this case to a court without jurisdiction; saying that when the respondents say ordinances and statutes are illegal, but are not being

enforced, and the Court agreed with the respondents that they are illegal and not being enforced; that he has not passed on the illegal statute and ordinances, and as the ordinances were being enforced, an injunction should have been issued, which the Appellate Court could not do, and thus illegal ordinances were being enforced at all times against this petitioner, through the chicanery of all the courts. The petitioner contends that the lower court passed on both the statute and ordinance when he said the cause was moot.

A fraud having been perpetrated on the lower and Supreme Court by the respondents' counsel, which both courts refused to investigate or consider, and as both courts were given sufficient information and complaints to check, both courts are violating the 14th amendment.

The Supreme Court of Illinois has been and is violating Art. II Sections 19 and 20 of the Illinois Constitution of 1870, as it is without authority to disregard the respondents' admittance that the Illinois Plumbing License Law of 1951 violates the 14th amendment, and the Court violated the 14th amendment by refusing to let this petitioner profit by what might have been an error, but which was caused by the chicanery of the lower court and the respondents' counsel which in this cause should have worked to the advantage of the petitioner when the lower court intentionally or otherwise overlooked the fact that the petitioner had prayed to have the Illinois Plumbing License Law declared null and void as it affected the respondents' right to refuse to issue plumbing permits to him.

REASON FOR GRANTING THE WRIT.

POINT I.

This court should stop the passing of legislation in violation of the 14th amendment, by ruling that when the State authorizes a violation of the 14th amendment, as a condition precedent to the enactment of legislation by a municipality that the enactment thereof can be enjoined.

There has been a marked increase of illegal legislation emenating from the State legislatures which intentionally violates the 14th amendment, and that is why this case is here.

It is the contention of the petitioner that when the State tells the municipality that it can have a law provided that it writes the law so that it makes it legal to violate the 14th amendment, and the Sherman Act, that he not only had the right to enjoin the City of Chicago from so doing, but it was his duty, so to do.

The Illinois Supreme Court and the Appellate Court both ignored the point in the brief which would have decided the issue, and based on the case of *Carter* v. *Carter Coal Co.* (298 U. S. 238), this petitioner contends that when the Supreme and Appellate Court refuse to pass on a point, which was alleged and ignored in the lower court, (R. 45-46) that they are intentionally violating the 14th amendment based on the decisions, which say courts must hear.

It is to be noted that the Illinois Supreme Court (This case, 411 Ill. 566) and the Appellate Court in their opinion (R. 19 to 22) say the petitioner was asking for a master plumber's license, which was not in the prayer, but what the petitioner sought was an injunction stopping the City of Chicago from enforcing any statute which would make a master plumber's license necessary to obtain a permit.

This is a new point never decided by this Court on a direct issue, and deciding that issue will have a beneficial effect in all states.

POINT II.

This court should establish for all time that the so-called prestige of the Courts and the legal profession are subordinate to the General Welfare of the citizens of any community.

In connection with this and other reasons this Court should note that the respondents by their motion admitted every allegation in the complaints and petitions in the abstract.

A reading of the opinion of the Appellate Court Justices of the Northern District of Illinois (R. 19) will show that it is on the ridiculous side as the brief explains (R. 8 to 18 inc.) and no further comment is needed about the opinion. Page 14 alone points out the disregard of fundamental justice and the chicanery on page 13 is undeniable.

It should be noted that the brief of the respondents (R. 67 to 70 inc.) uses 4 pages to pick out the items saying that the actual contemptuous matter (if it were not true and provable) should be the basis for keeping in operation statutes and ordinances that are repugnant to the Constitution of the United States and if this Court will grant certiorari, a decision could be rendered in the public interest which will estop higher courts from keeping illegal statutes in force because the litigant refuses to be a hypocrit and say the court erred, because he was confused, when the truth is that the court violated the Constitution of the United States to create a record that is dishonest, and then with the aid of the Illinois Supreme Court who will not accept a petition for writ of mandamus

based on any facts, he is allowed to keep the dishonest record to keep illegal statutes in force.

That section of the record page 70 which states "that the plaintiff attacks the defendants, their counsel and the trial judge in particular", is true. This petitioner does not deny it, and no court could legally hold him in contempt of court for what he said, as the report of proceedings will sustain his complaint, if the citation is issued, and the court reporter will stand behind his record. But that does not permit the use of the record in this petition as there is no record in the Illinois Supreme Court as it can never be obtained for the reasons set forth in the following point. However with motions to strike the respondents admitted the subject matter on the record pages 51 to 55 inclusive.

Chapters 162, 83, 82 and others under attack in the complaint (R. 30, 31, 46) and the Illinois Plumbing License Law of 1951 are in violation of the 14th amendment for the reasons set forth in the decree handed down by the Honorable DeWitt S. Crow set forth on pages 88 to 92 inc. of the record, but the petitioner is still out of business and has been for all intents and purposes out of business insofar as making any money is concerned since 1949 because the Illinois Supreme Court refuses to be bound by their own decisions because this petitioner insists that he can follow the law laid down by this Court on several occasions in the case known as *Gurt* v. *Gurt* (259 U. S. 597) which says the truth should always be told.

The Illinois Supreme Court in a futile attempt to raise the stature of the legal profession, in violation of the State Constitution have delegated the discipline of the lawyers and judges to the Bar Associations of Illinois, (Rule 59 of the Illinois Supreme Court, Smith-Hurd Stat-

utes, Chapter 110, Section 259.59) which has resulted in no discipline of any effectiveness and all the courts and counsel know this and they take advantage of it against this petitioner at all times.

So the real issue here is, as to this point, does a layman have to try to write in the language of a lawyer, and refuse to be honest with himself and his fellow citizens or can he obtain the aid of this court to offset the stand taken by the Illinois Supreme Court that they can not sustain a layman who informs them that the Appellate Court Justices they appoint are condoning the violation of the 14th amendment by violating the same amendment themselves.

The issue here is simple, this petitioner can raise 12 points to sustain his contentions about a decision in the lower court, and then the Appellate and Supreme Courts will ignore all the points, and indulge in what would be criminal libel by anyone else, and the matters they use can not be legally in the opinion, which is supposed to preserve and protect the prestige of the court and legal profession.

However, the prestige of the legal profession and the courts decreases and will continue to decrease in direct proportion to the number of times this petitioner comes to this court as the unwillingness of this petitioner to profit by any item or act which would reflect on his integrity is a matter of common knowledge in too many places all over this United States, and the so-called battle of Biggs vs. the Judges should be stopped by this court's ruling that the enforcement of an illegal statute in violation of the 14th amendment should be stopped by the highest court of the State, even if the petitioner or his counterpart anywhere else in the United States indulges in com-

ments not as objectionable as the accusations the Courts of Cook County and the Illinois Supreme Court makes about the individual involved herein.

As the record shows (R. 67 to 70) the corporation counsel of Chicago, is not interested in seeing that illegal statutes in violation of the 14th amendment are not enforced, he has but one object and that is to win his suit by methods that are repugnant to the idea that made this United States, he feels and thinks that in telling the truth in temperate terms, because it reflects on the conduct of men actively engaged in keeping illegal legislation in force by chicanery, that the petitioner is in contempt of Court.

At one other time, the Illinois Supreme Court sustained him on identical grounds holding the petitioner in contempt of court so that they could strike his brief, and then refuse to let another be filed. This was done on two occasions, *Biggs* v. *Hewitt* (not reported and handled by a motion) and *Biggs* v. *Spader,* 411 Ill. 42, which this petitioner brought to this court, where certiorari was denied. The facts in the latter case were that the Court admitted he marked a report of proceedings inaccurate and incomplete, not because it was inaccurate and incomplete but because, using his own words.

"If I were to let that report of proceedings go to the Supreme Court I would stultify myself as to the charge you level at this court." (Rec. p. 101—*Biggs* v. *Spader* case #694 this court Oct. Term 1951)

The charge was that he intentionally violated the 14th amendment, and he certainly did when he marked the report of proceedings inaccurate and incomplete, so that they could not be used.

There can be no question that the Illinois Supreme Court violates the 14th amendment every time it holds anyone in contempt of court for the sole purpose of striking the brief and then refuses to let another one be filed, and this court should stop it from violating the 14th amendment.

The illegal activities of the lower court, who worked with the assistant corporation counsel, by refusing to hear a petition for rule to show cause why he should not be held in contempt of court (R. 52), and then saying he denied the petition, could not be made a matter of record because the court called the case before time. The petitioner's court reporter was not present and the court insisted upon going ahead on the promise of the corporation counsel to give the report of proceedings to this petitioner, which the corporation counsel never intended to keep. When the lower court was asked to straighten it out he had a faulty memory. A petition for writ of mandamus was tried in the Illinois Supreme Court, but they followed their previous decisions, that say they will consider only matters of law, and hence when the court is corrupt the litigants are helpless, and thus the Illinois Supreme Court condemns without hearing at all times. The decision *People ex rel Dolan* v. *Dusher* (411 Ill. 535) shows the utter impossibility of anyone correcting the evil situation in Cook County with the use of the Illinois Supreme Court.

That the situation in Cook County, Illinois, is serious, can be ascertained from a reading of the Book known as Conduct of Judges and lawyers, written by the Honorable Orie Phillips, Chief Judge of the U. S. Court of Appeals for the 10th Circuit from a survey conducted by the American Bar Association where they refer to the attitude of the Illinois Supreme Court as being very lenient as to the members of the Bar in Cook County, wherein in 20 years 18,000 complaints were received about lawyers which

resulted in 214 cases of disbarment or dismissal. A copy of this book is presented to the court for its use if this is permissible, or is loaned to the court if that is the proper procedure. A reading of the pages 85 to 118 inclusive will convince this court that the citizens of Illinois need help, and this court can give it, by co-operating with this layman, who is attempting to do something that many attorneys have expressed a desire to do, but are afraid to do.

POINT III.

The Illinois Supreme Court is operating and has operated over a long period of years, in violation of the 14th amendment to the Constitution of the United States, and this Court should use this case to set the pattern for their future operation as it affects illegal statutes of the State of Illinois and the illegal ordinances of the City of Chicago.

The Honorable John P. Barnes, senior Judge of the United States District court for this District has stated that the purpose of the present Civil Practice Acts was to take the hocus-pocus out of lawsuits, and the public believes that to be true.

However, the public is in error, as insofar as construing the illegality of statutes or ordinances the Justices of the Illinois Supreme Court operate a merry go round, (R. 74-75) which can not be stopped unless this court intercedes.

This is the second time this same identical lower court decision came before the Illinois Supreme Court. Their first opinion is known as *Biggs* v. *City of Chicago* (411 Ill. 566) and this court will note that they sent the case back to the Appellate Court and the wisdom of the opinion should be weighed by the quotation which says there is argumentative material in the complaint, when the respondents waived any augumentative material with their

motion. (R. 48 to 50 inc.) There was no comment as to the lower court finding that an ordinance was null and void, which made the case moot, only derogation of a layman which could not be legally in the opinion as the question was not raised in the motion. Having admitted all facts well pleaded, the respondents had admitted that the State and City plumbing ordinances were null and void. The Supreme Court said the lower court passed on the matter generally which is a meaningless statement, not consistent with what happened. What the lower court actually did was to agree that the City of Chicago could not license any master plumber, and the State could not use the Illinois Plumbing License Law in Chicago as the City of Chicago admitted it was illegal, so that made it quite correct to refuse the petitioner plumbing permits because neither the City nor the State ever had legal authority to license the petitioner, as their statutes violated the 14th amendment (*People* v. *Brown*, 407 Ill. 568) but because they were able to keep this petitioner from being licensed by illegal statutes he could never obtain permits because the State and City violated the Constitution of the United States to prevent him from getting the license. They are still doing it at this writing. (R. 71-75).

It is the contention of the petitioner that when a statute is in violation of the Constitution of the United States, and the respondents admitted that it was, the Supreme Court of Illinois is bound by the decisions of this Court in particular as to the case *Carter* v. *Carter Coal Co.* (298 U. S. 238) and the Appellate and the Illinois Supreme Courts can not refuse to stop the operation of the illegal statute. They have done this type of chicanery with this petitioner since 1949, in the cases reported as *Biggs* v. *City of Chicago*, 339 Ill. App. 145, *Biggs* v. *Hewitt*, 339 Ill. App. 144. (Note admission R. 71 to 75 incl.)

In the case of *Biggs* v. *City of Chicago*, 339 Ill. App. 145, mentioned in *Biggs* v. *Schwartz*, this court #578, October Term, 1951; the Supreme Court said the petitioner was in contempt of court for unknown reasons, and one reason that this same Assistant Corporation Counsel in charge of appeals said should include the contemptuous statement that this petitioner made, which was,

> "It is unfortunate that the plaintiff (petitioner herein) was raised in a Christian Doctrine that teaches he is his Brother's Keeper",

and

> "he refused to become a party to a conspiracy to spend a customer's money for an item that could not be legally asked for";

which was supposed to make a religious issue.

The issuance of a plumbing permit (R. 53-54) *for work, to be done by city employees, has no relation to public health and safety,* (*Hirsch* v. *Michigan State Plumbing Board*, 289 Mich. 108, 286 N.W. 176-178) *but is part of the agreement in restraint of trade between the city officials and the Plumbers Union, who control the Master Plumbers, making it necessary to employ a master plumber, and pay him a fee to obtain a permit to let the City of Chicago tap their own water main, with their own employees,* and the Justices of the Illinois Supreme Court are fully aware of the fact that the lower court has agreed that this unconstitutional item is supposed to be moot, when it is being enforced against this petitioner, as the Court was told by the respondents in oral argument on direct questions by the Justices of the Illinois Supreme Court who did not write the opinion which sent the case to the Appellate Court.

The respondents having admitted the Illinois Plumbing License Law is unconstitutional, (R. 48 to 50 inc.) could

not legally enforce it and taking the item to the Appellate Court to find out if that court thinks a lower court erred in letting the respondents admit that it was unconstitutional, when constitutional questions cannot be considered by the Appellate Court, does not come within the province of "due process of law", but shows very clearly that when a layman goes to court, the courts cease to function as the 14th Amendment says they should (*Biggs* v. *City*, 411 Ill. 566). The Justices of the Supreme Court are keeping this petitioner out of the plumbing business, and indirectly out of the general contracting business, by refusing to issue a temporary injunction against the enforcement of an admitted illegal statute, and it is the contention of the petitioner, that under the circumstances the Justices are directly responsible for this petitioner not being in business.

The Abstract and Brief (R. 27-55 inc.) of this petitioner shows the contempt the respondents have for the 14th Amendment, and in the Appellate Court opinions *Biggs* v. *City of Chicago*, 339 Ill. App. 145 and *Biggs* v. *Hewitt*, 339 Ill. App. 144, there is sufficient evidence (R. 72-73-75) to show that all the Appellate Court opinions come within the condemnation of this Court's ruling in the case of *Gibbs* v. *Buck*, 307 U. S. 66-95 S. Ct. 725, which states,

> "There is no lack of equity sufficient to justify a trial court in dismissing a bill to enjoin the enforcement of a State statute, where irreparable harm to the complainants by the enforcement of the statute is clearly shown from the prohibiting factors of the statute * * *".

and the prejudice that this petitioner complains of is no myth (R. 13).

As stated elsewhere in the petition, this petitioner attacked the constitutionality of the Plumbing Ordinances of Chicago in 1949, whose phraseology and wording as to the

parts attacked read word for word with the illegal Plumbing License Law enacted in 1935 (*People* v. *Brown*, 407 Ill. 565), so that he could get a license and plumbing permits.

The lower court refused to have a trial, and in his order of dismissal said that as a matter of law the ordinances were valid and complied with the Constitution.

An appeal was made to the Illinois Supreme Court, who without an opinion sent it to the Appellate Court First District, where it is now reported in 339 Ill. App. 145 as *Biggs* v. *City of Chicago*.

The Illinois Appellate Court First District ruled in the abstracted opinion that as a party not a plaintiff had violated the ordinances, (and no trial was held, and they could not legally so rule), this petitioner was without equity to attack the licensing provisions of the ordinances, and therefore the lower court should be sustained in saying the law was constitutional. The two statements are absurd, but in a 25 page opinion which was not printed they also said the following:

> "Constitutional questions are not within the jurisdiction of this Court. See *Village of Lake Zurich* v. ....., 310 Ill. 209."
>
> "We deem this point to be a challenge to the constitutionality of certain ordinances. As stated we do not have the power to pass on the constitutionality of the ordinances."
>
> "We must decide this case on the premise that the Plumbing Code of the City of Chicago and the rules and regulations pertaining thereto are constitutional."
>
> "Mr. Biggs attempted to deal directly with the Department of Public Works. The employees refused to deal with him because he was not a licensed plumber."

At the time the petitioner (the Mr. Biggs) was the registered agent of Pipe Trades, Inc., who have a charter which permits them to do plumbing work in Illinois, and prior to attacking the Plumbing Ordinance of Chicago, because of the refusal of the Department of Public Works to deal with him as agent of Pipe Trades, Inc., a petition for writ of mandamus was instituted, which is reported in the same volume of *Biggs* v. *City of Chicago,* and is known as *Biggs* v. *Hewitt,* 339 Ill. App. 144, and in the opinion not printed the same justice who wrote both opinions said,

> "The trial court properly refused to assist him in his illegal attempt to conduct a plumbing business without a license."

In words that we all understand, because this petitioner is the registered agent of a lawful corporation, having a state charter, because a city ordinance of the same state does not have a provision for corporations in their plumbing code, if the agent of the legal corporation wants civil answers and recognition as such agent, the Appellate Court convicts him of violating a plumbing code that is illegal because they say they have to base their decision on it being legal, and this petitioner is criminally libelled by justices of the Appellate Court because he attacks an illegal statute. (Note record 71-72-73.)

And when he tells the Illinois Supreme Court that to be tried and found guilty of violating an illegal statute that cannot exist, by justices of the Appellate Courts who can not try anyone, he is held in contempt of court, *Biggs* v. *City of Chicago* 31439 Petition for leave to appeal from 339 Ill. App. 145, and his brief is stricken, on motion of this assistant corporation counsel, when at all times the ordinance is illegal which is a matter of common knowledge and was so held (*People* v. *Brown,* 407 Ill. 565) and

it is questionable if this Court would overrule the Supreme Court's finding of contempt.

The issue here is clear, the city officials and the courts are working together to keep the illegal Illinois Plumbing License Law in effect now as they did in *Biggs* v. *Hewitt,* 339 Ill. App. 144, and *Biggs* v. *City of Chicago,* 339 Ill. App. 145, to keep this petitioner out of the plumbing business, while the City wrote another illegal plumbing license law by virtue of an illegal grant by the State Legislature, which they subsequently did, and at all times this petitioner is out of business, because the City of Chicago will not tap water mains with their own men, because the Chicago Plumbing Code, which they and the lower court say is moot, but which they were illegally enforcing as of August 2, 1952, provides that permits shall be issued to licensed master plumbers only, and plumbing corporations as such do not exist. The Illinois Supreme Court says that when the respondents' counsel says the cause is moot, and the lower court agrees that parts of a complaint attacking the constitutionality of illegal statutes being enforced are moot, he has not passed on the question when the Court said they are moot, which is absurd.

When the Court agreed the unconstitutional items were moot, he has said they are dead, and the Illinois Supreme Court is the only court who can insist they are permanently dead, but as they were very much alive, and were and are being used against this petitioner without any modification as it affects the issue here, the Justices of the Illinois Supreme Court, by their opinion, are keeping this plaintiff out of business in violation of Art. II, Section 19 of the Constitution of Illinois, and the 14th Amendment, because they will not issue an injunction to make the ordinances moot, as they were supposed to be.

In States other than Illinois the Supreme Courts take the position that an unconstitutional statute is just that. The Illinois Supreme Court has played "Button, Button, who has the Button" with complaints about unconstitutional statutes with the Appellate Court on two occasions, and this petitioner is the victim in all cases, and this Court should stop the merry-go-round (Note R. 75-59-60) and inform the Illinois Supreme Court that unconstitutional statutes are just that (*Carter* v. *Carter Coal Co.*, 298 U. S. 238) and if the party bringing the action against the unconstitutional statute is being hurt by it, (and this petitioner has been harmed for 18 years), errors by the lower court or just criticism of a court supported by the record, does not justify the waiving of the provisions of Art. II, Section 19 of the Constitution of Illinois *which assures this petitioner and others prompt justice without costs.*

It should be noted that on page 74 of the record the respondents say that the "petitioner can not contend the Act of 1951 is unconstitutional," when by their motion to strike they admitted it was, and that they seek to amend their motion (R. 48 to 50 inc.) in the Supreme Court (R. 77) by citing certain items of an ordinance. With a prejudiced lower court (R. 14) and no record, this Court can still rightfully assume that the term *"chicanery"* as applied to respondents' counsel is mild, and in admitting the Mayor and others condoned various illegal acts (R. 30, 36, 39, 40, 52-53-54-55-59) by their motion to strike, the comments of their counsel (69 and 70 inc.) should be considered as *"crocodile tears."*

POINT IV.

The allowance of a Writ of Certiorari in this case should have a beneficial effect on all the courts in the United States, and re-establish the people's confidence in ultimate justice by legal process.

While the statement above may seem broad and far-fetched, the petitioner is sincere in his statement, and what he says hereinafter or what he has said before not relating to, the actual merits of this one case, will not appear in his Brief which will be filed if certiorari is granted, and the statement needs explanation, and the explanation will justify the statement.

When this petitioner sought books covering the procedure before this court, the book seller who found the item of selling books more profitable than practicing law in Cook County, said, "Who do you think you are, God." In the discussion that followed he expressed his opinion that one must be related to the Deity to appear before this court to plead his own cause, even if the ultimate decision would benefit the entire United States.

Subsequently, two of the assistants to the corporation counsel and the attorney for the plumbers union, who has actually sat in the office of the Corporation Counsel where they wrote the preliminary draft of the illegal Illinois Plumbing License Law of 1951 informed the petitioner that they had nothing to fear from this petitioner's appeals to this court as this court was too busy to waste time listening to any layman.

At another time one of the Trustees of an Odd Fellow Lodge of which this petitioner has been Noble Grand, informed the petitioner that he was wasting his time, as although he was a lawyer and had given certain politicians a sum of about $2500.00 to be allowed to appear before

this Court, he had never been placed on the rolls of lawyers allowed to appear before this court.

The general talk, and the intonation of the words, spoke of the despair about the futility of appeals to this Court that the people in Cook County, have accepted as being the truth about this court, which this petitioner does not and will always refuse to believe, because he believes that when this court understands that the higher courts of Illinois are violating the 14th amendment, to estop giving a decision for a layman, who is fighting illegal legislation he believes that this court will grant certiorari and re-establish the confidence in this court, that lawyers intentionally undermine by statements, which are actually contemptuous of this court.

The prestige of this court will be enhanced by establishing for all time that persons hurt by statutes in violation of the 14th amendment do not have to employ counsel to represent them before any court. It is the contention of the petitioner that technicalities (R. 27-34-48-70) used by corporation counsels, whose salaries are paid by taxes from citizens, can not be used to keep in force legislation that is illegal, as they are honor bound to stop violations of the Constitution of the United States, and as the Illinois Supreme Court and the Appellate Court will not accept or follow that precept, this court should make them do it.

For any one or more or all of the reasons heretofore stated the writ of certiorari should be allowed.

Respectfully submitted,

EUSEBIUS JAMES BIGGS,
Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 797

EUSEBIUS JAMES BIGGS,

Petitioner,

vs.

THE CITY OF CHICAGO, MARTIN H. KENNELLY, OSCAR E. HEWITT, and JOHN J. MORTIMER,

Respondents.

On Petition for Writ of Certiorari to the Illinois Supreme Court or the Appellate Court, First District of Illinois.

BRIEF FOR RESPONDENTS IN OPPOSITION TO CERTIORARI.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois (which ordered the case transferred to the Appellate Court of Illinois for the First District because of the absence of a constitutional question) is officially reported in 411 Ill. 566 and is also referred to herein (R. 71).

The opinion of the Appellate Court of Illinois for the First District is officially reported in 348 Ill. App. 551, (Abst. Dec., Gen. No. 45, 825), and is set forth in full herein (R. 19-22).

STATEMENT OPPOSING JURISDICTION.

The only statute upon which the petitioner predicates the jurisdiction of this court is Section 2101 (c) of Title 28, United States Code, which prescribes the 90-day period for review (Petition, p. 2). No reference is made by petitioner to Section 1257 of Title 28, United States Code, nor does the record disclose that any federal question, substantial or otherwise, has been determined by the State court judgment here sought to be reviewed. Indeed, it appears clearly from the opinion of the Illinois Supreme Court that no constitutional question was involved or passed upon, and that the only issue presented by the record was the legal sufficiency of the complaint to state a cause of action (R. 71; 411 Ill. 566, 568). It is further manifest from the opinion of the Appellate Court that the issue of the legal sufficiency of the complaint was correctly decided adversely to the petitioner, and that its judgment of affirmance was based entirely upon the determination of that question (R. 19-22; 348 Ill. App. 551).

We are not unmindful of the rule that this court will determine for itself whether the record does or does not present a federal question, and will not deem itself concluded by the holding of the court below on that issue, but we respectfully submit that the decision below rests upon a non-federal ground fully adequate to support it, and that the petition for writ of certiorari should for that reason be denied.

QUESTIONS PRESENTED.

1. Does not the record here clearly establish that the only issue determined by the State court judgment was whether the complaint filed by the petitioner in the trial court was legally sufficient to state a cause of action?

2. Is not the question of the legal sufficiency of the complaint, as presented on this record, purely one of local law, and not one within the sphere of this court's appellate jurisdiction?

3. Does not the judgment of the Appellate Court of Illinois rest upon a non-federal ground adequate to support it, and not upon the determination of a federal question?

4. In any event, did not the court below correctly decide that the complaint was properly dismissed because it failed to state a cause of action?

STATEMENT OF THE CASE.

The statement in the petition is both incoherent and intemperate. It attacks the integrity of the courts, and of the respondents and their counsel. Moreover, it is entirely inadequate to present the issues involved, and we deem it necessary, therefore, to summarize the pertinent facts. These consist entirely of the well pleaded allegations of the complaint, as amended and supplemented (R. 35-38, 41-46), and of the motion of the respondents to strike the complaint and dismiss the action (R. 48-50), because a final disposition of the cause was made upon these pleadings (R. 55-56).

Count I of the complaint attacks the validity of the Illinois Plumbing License Law of 1935, and seeks to restrain

the respondents from enforcing Chapter 162 of the Municipal Code of Chicago which is the City Plumbing Licensing Law passed pursuant to the Act of 1935 (R. 27-31, 35-38). In petitioner's amended petition for the issuance of a temporary injunction, it is pointed out that the Supreme Court of Illinois, in *People* v. *Delbert DeWitt Brown*, 407 Ill. 565, held the Act of 1935 to be invalid on certain grounds (R. 39). In Count II of his complaint, petitioner alleges that the General Assembly expressly repealed the Act of 1935 and passed a new Illinois Plumbing License Law on July 26, 1951 (R. 42). In said Count II, petitioner also attacks the validity of the Act of 1951 on various grounds (R. 42-45), and argues that since it was "mandatory" for the city to enact an ordinance substantially similar to the Act of 1951, the statute has in effect illegally authorized the City of Chicago to enact an unconstitutional ordinance, and petitioner concludes with the prayer that the city and certain of its officials (petitioners herein) be restrained from enforcing the Act of 1951 and from attempting to pass or enforce any ordinance substantially similar to the Act of 1951 (R. 45-46).

The motion of the respondents to strike the complaint and dismiss the action did not purport to put in issue any of the charges made in the complaint as to the unconstitutionality of the Act of 1935 or of the Act of 1951 (R. 48-51). Instead, the motion to strike and dismiss merely raised the following points:

(1) That Count I presents issues that are moot, because its allegations are predicated upon the Act of 1935 which had since been declared void, and upon Chapter 162 of the Municipal Code of Chicago (the plumbing licensing ordinance) passed pursuant to the Act of 1935 and, therefore, also invalid and no longer in force (R. 48-49).

(2) That Count II, which assails the Act of 1951 as invalid, states no cause of action against the petitioners, because no ordinance has been enacted under the authority of the Act of 1951; that petitioner cannot compel the City to act or restrain it from acting on a subject as to which it has not yet legislated (R. 49); that until such time as the city enacts an ordinance pursuant to the permissive grant of the Act of 1951, all plumbing licenses within the City of Chicago as well as the rest of the State must be obtained from the State of Illinois, and hence the petitioner has no cause of action against the city or any of its officials (R. 49). The provision of the Act of 1951 conferring the permissive grant of authority is set forth in said motion to strike and dismiss (R. 49-50).

The order of the trial court sustaining the motion of the respondents to strike the complaint and to dismiss the action does not purport to pass upon any of the charges of unconstitutionality contained in the complaint either with respect to the Act of 1935 or the Act of 1951, but simply recites as follows:

> "It is Further Ordered that the motion of the defendants to strike and dismiss the amended complaint as amended and supplemented be and is hereby sustained, and that the above cause of action be and is hereby dismissed." (R. 56.)

Thus it is clear that the motion of the respondents to strike the complaint and dismiss the action did not present, nor did the trial court decide, any constitutional issues.

What the trial court did in legal effect determine is simply this: (1) that the invalidation of the Act of 1935 left no valid and subsisting City Plumbing Licensing Ordinance; (2) that by the express provisions of the Act of 1951, all plumbing licensing power was vested in the

State; (3) that the permissive authority given by the Act of 1951 to the City of Chicago to pass a plumbing licensing ordinance in accordance with the provisions of said Act had not yet been exercised by the city; (4) that in the absence of any existing city ordinance under the Act of 1951, petitioner must apply to the State for any plumbing license to which he claims to be entitled, and the city has presently no power to act in the premises; (5) that, therefore, the issues raised in petitioner's complaint are moot as to the Act of 1935 and Chapter 162 of the Municipal Code of Chicago, both of which have been invalidated, and is premature and misconceived in so far as he seeks relief against the city and certain of its officials on the basis of a permissive ordinance not yet enacted.

Thus the final judgment order of the trial court does not constitute a decision of any constitutional issue, but a determination of the legal insufficiency of the complaint.

Petitioner prosecuted a direct appeal to the Supreme Court of Illinois, which held that no constitutional issue was presented to or decided by the trial court, that the only issue involved and determined was the legal sufficiency of the complaint, and the court, in obedience to the statutory limitations upon its own jurisdiction on direct appeal, (Section 75(1) of Illinois Civil Practice Act; Chap. 110, par. 199(1), Ill. Rev. Stat. 1951), declined to take jurisdiction and transferred the case to the Appellate Court (R. 71; 411 Ill. 566, 568).

The Appellate Court heard the cause, entered judgment affirming the ruling of the trial court, and filed an opinion setting forth the basis of its decision (R. 19-22). We refer this court to the Appellate Court opinion for an accurate statement of the case.

Petitioner filed in the Supreme Court of Illinois a petition for leave to appeal from the judgment of affirmance

entered by the Appellate Court (R. 1-17), and the respondents filed their answer to said petition (R. 63-80). On March 11, 1953, the Supreme Court of Illinois denied the said petition for leave to appeal (R. 93; 350 Ill. App. i i).

SUMMARY OF ARGUMENT.

The only issue determined by the decision of the Appellate Court of Illinois was whether the complaint filed by the petitioner in the trial court was legally sufficient to state a cause of action.

From this it follows that the judgment here sought to be reviewed rests upon a non-federal ground adequate to support it, and is not predicated upon the determination of any federal question.

In any event, the decision of the Appellate Court of Illinois, affirming the judgment of the trial court dismissing the complaint for failure to state a cause of action, was entirely correct.

For the foregoing reasons, the petition for writ of certiorari should be denied.

ARGUMENT.

The only issue determined by the decision of the Appellate Court of Illinois was whether the complaint filed by the petitioner in the trial court was legally sufficient to state a cause of action. Hence the judgment here sought to be reviewed rests upon a non-federal ground adequate to support it, and the petition for writ of certiorari should, therefore, be denied. In any event, the case was correctly decided, and there is no reason for the exercise by this court of its certiorari jurisdiction.

The judgment which the petitioner is seeking to have this court review was entered by the Appellate Court of Illinois upon the transfer of the case to that court by the Supreme Court of Illinois which refused to take jurisdiction of the direct appeal from the trial court judgment because no constitutional question was presented or decided. The Supreme Court of Illinois came to the conclusion that the only issue presented by the record was whether the trial court correctly decided that the complaint failed to state a cause of action (*Biggs* v. *City of Chicago*, 411 Ill. 566, 568; R. 71).

The Appellate Court of Illinois heard the cause pursuant to said order of transfer, and held that the complaint failed to state a cause of action and was properly dismissed by the trial court (R. 19-22). The opinion of the Appellate Court recites the allegations of the complaint, as amended and supplemented, then sets forth the substance of the motion to strike and dismiss the same, and concludes as follows (R. 22):

> "It therefore appears that the plaintiff is asking for a plumbing license from the city which the city

has no authority to issue because there is no existing city plumbing licensing law. He is further asking for a permit to do plumbing work but sets forth no facts to indicate that he has either a city license under the pre-existing ordinance or a state license under the Act of 1935, nor that he has applied for a state license under the Act of 1951. He is asking the court to restrain the enforcement of an ordinance which is no longer in effect by virtue of the unconstitutionality of the Act under which it was passed, and to restrain the enforcement of a new plumbing licensing ordinance which is not yet in existence. **We think the action of the trial court in dismissing the complaint as stating no cause of action was proper.** The judgment of the Circuit Court of Cook County is affirmed." (Emphasis supplied.)

Thus it is clear that the only issue determined by the decision of the Appellate Court was that the dismissal of the complaint by the trial court was proper because it failed to state a cause of action.

It is quite apparent, from all of the foregoing, that no constitutional question, federal or otherwise, was either involved, presented or decided. The Illinois Plumbing License law of 1935 had been not only judicially invalidated by the Supreme Court of Illinois, but had also been expressly repealed by the State legislature. The repeal of said Act of 1935 abrogated and extinguished the legal effect of the city ordinance which had been passed pursuant to the grant of authority contained in said statute. No new city ordinance had yet been enacted pursuant to the Illinois Plumbing License Law of 1951 when the trial court dismissed the complaint for failure to state a cause of action. Consequently, the petitioner was in no position to proceed against any of the city officials (the respondents herein) because they had no authority to grant plumbing licenses in the absence of an enabling ordinance passed pursuant to the Illinois Plumbing License Law of

1951. As the Appellate Court said, plaintiff had the opportunity to apply for a State license under the Act of 1951 (R. 22). This he did not choose to do, but instead proceeded against the city and its officials who had no legal authority in the premises before a new ordinance was passed.

Any contention that the prior city ordinance, which was passed pursuant to the authority of the Act of 1935, continued in force and effect notwithstanding the judicial invalidation and express repeal of said Act of 1935, is without any merit, and the Appellate Court of Illinois expressly held to the contrary of this contention (R. 22). In passing upon the sufficiency of the complaint filed by petitioner in the trial court, the Appellate Court declared (R. 22):

> "He is asking the court to restrain the enforcement of an ordinance which is no longer in effect by virtue of the unconstitutionality of the Act under which it was passed, and to restrain the enforcement of a new plumbing licensing ordinance which is not yet in existence."

The correctness of the ruling of the Appellate Court that the prior city ordinance was abrogated by virtue of its judicial invalidation and express repeal is beyond doubt. It is well settled that where a city ordinance depends for its existence and legal effectiveness upon a statute pursuant to which it was enacted, the ordinance loses its validity because of the unconstitutionality of the statute. (Vol 62, C. J. S., Munic. Corp., Sec. 430, p. 827, note 30.)

The same result follows upon a repeal of the statute upon which the continued existence of the ordinance depends. Here, the Act of 1935 was both invalidated and expressly repealed. This removed the only source of power for the enactment and legal effectiveness of the city plumbing licensing ordinance. Until a new ordinance

was passed under a new statute, the city and its officials had no power to act in that field.

There is one exception to this rule of dependent validity, and this arises only where the repealing statute re-enacts the earlier statute without substantial changes. In such a case, the ordinance passed under the earlier statute is not abrogated by the repeal, because the instantaneous re-enactment of a substantially similar statute supports the continued validity of the earlier ordinance (Vol. 62, C. J. S., Munic. Corp., Sec. 437, p. 838).

However, a comparison of the Illinois Plumbing Licensing Law of 1935 with the Illinois Plumbing Licensing Law of 1951 shows clearly that the Act of 1951 was not a mere re-enactment of the 1935 Act, but differed from the earlier statute in numerous substantial particulars. [Compare Chapter 111½, pars. 95-116, Ill. Rev. Stat. 1949, pp. 577-583, which is the Act of 1935, with Chapter 111½, pars. 116.1-116.35, Ill. Rev. Stat. 1951, pp. 552-557, which is the Act of 1951].

Thus, so far as the record shows, the old ordinance was gone and no new ordinance had yet been enacted. The fact that petitioner may not have needed a license because of the invalidation of the Act of 1935 did not give him any standing to proceed against the City of Chicago or its officials to compel the issuance of a license or to enjoin the enforcement of the licensing provisions of an ordinance which did not exist. Until the enactment of a new ordinance under the Act of 1951, neither the city nor its officials were proper parties defendant, and the petitioner should have made application to the appropriate state agency for a license under the statute.

Petitioner cannot properly contend that the Act of 1951 is unconstitutional, because (1) it is substantially different

from the Act of 1935, and (2) its validity must be presumed in the absence of any authoritative ruling to the contrary. The ruling of the Circuit Court of Sangamon County in *Schroeder* v. *Engle,* No. 136/51, rendered on December 16, 1952, holding the Act of 1951 invalid in certain particulars (R. 88-92), does not affect the presumptive validity of the Act of 1951 so far as the case at bar is concerned. A final determination of the question of the validity of the Act of 1951 has not yet been made by the Supreme Court of Illinois. Therefore, that question is not properly before this court at this time. But even on the assumption that the Act of 1951 is invalid, the abrogation of the old ordinance and the non-existence of any new ordinance requires the conclusion that petitioner's action is against the wrong parties and that his complaint was properly dismissed.

Petitioner pointed out to the Appellate Court, and is also pointing out in his petition herein, that the City of Chicago did in fact pass a new ordinance under the Act of 1951. This is true, but it was not enacted until June 11, 1952, long after the institution of the action and also long after the entry by the Circuit Court of its order striking the complaint and dismissing the action. We took the position before the Appellate Court, and we take the same position here, that the question of the correctness of the trial court's ruling must be decided upon the basis of the legal situation which existed when the ruling was made by the trial court. At that time, no new ordinance had been passed, and the old one had lost its legal effect. For this reason, the Appellate Court properly confined its opinion to the facts prior to the enactment of the new ordinance. We submit that this court, in passing upon the propriety of the Appellate Court's action, must also treat the case as if no new ordinance was in existence. If peti-

tioner wishes to make out a case under the new ordinance, it is incumbent upon him to file a new proceeding and obtain a ruling by the trial court before he is entitled to a review thereof. The case now before this court is upon a state of facts ante-dating the new ordinance, and petitioner is not entitled to a ruling by this court, nor was he entitled to a ruling by the Appellate Court, upon a record different from that which was before the trial court.

If plaintiff feels that he is being aggrieved by the new ordinance, or if he wishes to attack the Act of 1951 and the new ordinance passed thereunder as unconstitutional and void, he is at liberty to do so in a new proceeding properly instituted for that purpose. But he cannot try his case in this court on a record entirely different from that presented to the trial court. Upon this record, the Act of 1951 must be presumed valid, and the ordinance of June 11, 1952, not having been before the trial court or the Appellate Court for consideration, is not before this court on this petition for certiorari.

The question whether the trial court properly not only dismissed the complaint but the entire action as well is clearly not a federal question within the appellate jurisdiction of this court. We should like, however, to show that the dismissal of the action was entirely proper under the circumstances of the case.

Section 26 of the Illinois Civil Practice Act provides that no action shall be defeated because of non-joinder of parties. Based upon said Section 26, the petitioner contended in the court below that it was error for the trial court to have dismissed the action upon the dismissal of the complaint. It has been repeatedly held, however, that the rule that no action will be defeated because of a non-joinder of parties does not apply where the complaint is stricken or dismissed as to all of the parties defendant

in the cause. (*Zukowski* v. *Armour,* 107 Ill. App. 663, 666; *Thompson* v. *Otis,* 285 Ill. App. 523, 525-526, 532-535; *Lawrenceville Township High School District No. 71* v. *St. Francisville Community High School District No. 102,* 332 Ill. App. 437; Abst. Dec. Term No. 47 M 5).

From the foregoing decisions, it is clear that the Illinois rule that an action will not be dismissed because of the non-joinder of parties defendant applies only where at least one of the parties defendant remains in the case. Where, however, the complaint fails to state a cause of action as to any of the defendants, and is dismissed or stricken as to all of them, then the action must be dismissed altogether because there is no party defendant remaining in the case to whom any new party can be joined. It is respectfully submitted, therefore, that when the trial court ordered the complaint stricken as to all of the defendants on the ground that it did not state a cause of action as to any of them, the cause was at an end and was properly dismissed notwithstanding the provisions of Section 26 of the Civil Practice Act.

It should also be noted that the defect of the complaint was incurable by amendment, because the non-existence of any new ordinance under the Act of 1951 conclusively precluded the grant of any relief against the city or any of its officials.

Petitioner contended below that the complaint states a cause of action against the City of Chicago and its officials for refusing to issue permits for the doing of plumbing work on the ground that he was unlicensed. It is true that Chapters 82 and 83 of the Municipal Code of Chicago contain provisions against the issuance of permits to unlicensed plumbers. However, these chapters constitute the Chicago Plumbing Code and specify minimum standards of work and materials for the doing of plumbing work,

and they provide that no permit for the doing of such work shall be issued except upon a showing of compliance with such standards. Petitioner's complaint, as amended and supplemented, fails to allege such compliance, and hence fails to make out a case of improper refusal of such permits. The reasonableness of these minimum standards, and the power of the city to prescribe them, is not challenged on this record. Even plumbers who have the requisite licenses are not entitled to plumbing permits unless they also comply with these minimum requirements. Thus the complaint fails to state a cause of action based upon the alleged refusal to issue plumbing permits to petitioner, quite independently of his status as an unlicensed plumber.

It is respectfully submitted, therefore, that under no conceivable theory did petitioner's complaint, as amended and supplemented, state a cause of action against the respondents, or any of them, and that the Appellate Court properly affirmed the judgment of the trial court striking the complaint and dismissing the action.

CONCLUSION.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari in this cause should be denied.

Respectfully submitted,

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Attorneys for Respondents.

FILED
JUN 24 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. [redacted]68

EUSEBIUS JAMES BIGGS,

Petitioner,

vs.

THE CITY OF CHICAGO, MARTIN H. KENNELLY, OSCAR E. HEWITT, and JOHN J. MORTIMER,

Respondents.

Petition for Writ of Certiorari to the Illinois Supreme Court or the Appellate Court, First District of Illinois.

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO CERTIORARI.

E. J. BIGGS, *petitioner, pro se.*

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Argument.

In General—

I. The cause in the lower court was never moot and the higher courts of Illinois violated the 14th amendment when they ruled that it was.

II. The questions raised by the respondents are not appropriate to the issue before this Court and this Court has jurisdiction and it is properly pleaded.

III. The provisions of the State and City licensing laws, which control the issuance of plumbing permits have the same identical objectionable features condemned by the Illinois Supreme Court in 1950.

IV. The Illinois Supreme Court has now ruled, for others, that the Illinois Plumbing License Law of 1951 is invalid for the reasons set forth in the petitioner's complaint but the respondents are still enforcing the same illegal provisions of the Act against this Petitioner.

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IN THE

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THE CITY OF CHICAGO, MARTIN H. KENNELLY, OSCAR E. HEWITT, and JOHN J. MORTIMER,

Respondents.

Petition for Writ of Certiorari to the Illinois Supreme Court or the Appellate Court, First District of Illinois.

REPLY BRIEF OF THE PETITIONER.

MAY IT PLEASE THE HONORABLE JUSTICES OF THIS COURT:

Now comes the petitioner Eusebius James Biggs and in reply to the respondents says as follows:

In General.

The respondents have refused to join the issue on the questions propounded by this petitioner and seek to perpetrate a fraud on this court, by using the statement of the Justices of the Appellate Court that this petitioner was seeking a master plumber's license, and having failed to state in the complaint that he had applied for a license under the new state law, the complaint was properly

stricken when the application for a master plumber's license was not the issue.

This plaintiff having been illegally refused that license so many times, has set out to break that license law, and it was his privilege to attack any part of that license law which was vulnerable, and in this case, he attacked the license law of the State and the City, and the respondents admitted both of them were unconstitutional by their motion to strike, and all that was ever needed to put the plaintiff back in the businesses he owns, was an injunction which he did not get because the lower court violated the Illinois criminal statute known as falsification of records (Smith Hurd Statutes of Illinois (hereinafter referred to as S.H.S.) chapter 38, section 401), which reads in part as follows:

> "If any judge—shall falsify any minute—of any proceeding whatever—of or belonging to any public office within this state—he shall be imprisoned for not less than one year nor more than seven."

In Cook County, Illinois there exists a state of anarchy, because the Illinois Supreme Court has ruled that a court order supersedes the actual record, and thus when the lower court judge in this case signed an order saying that he denied the petition for rule to show cause (R. 55) this court and all courts would assume that it was done legally, but the fact is that the lower court never saw the contents of the petition for rule to show cause before he denied it, as he never had it in his hands, as he refused to take it. This court should note that as stated on page 13 of the Brief of this petitioner, another judge marked a report of proceedings inaccurate and incomplete, so that it could not be used in the Supreme Court, and when this was pointed out to the Justices of the Illinois Supreme Court, they indulged in what would be criminal libel with anyone

else, because this petitioner pointed out that the judge who marked a report of proceedings, inaccurate and incomplete, so that it could not be used, and admitted the report of proceedings was correct, and then approved a report of proceedings admitting that he had done it, was undoubtedly too stupid to make judicial decisions. The judge could have gone to prison on his own confession, but being repetitious, in so far as this petitioner is concerned the Courts have refused to function as the 14th amendment says they shall, and he is the victim of a state of anarchy, presently existing in Cook County, Illinois, where political expediency prevails over Justice at times.

I.

The cause in the lower court was never moot, and the higher courts of Illinois violated the 14th Amendment when they ruled that it was.

The respondents admitted that paragraphs 7 and 9 of Chapter 83 of the Municipal Code of Chicago could not be complied with (R. 42) and these paragraphs say in part,

> "no (plumbing) permit shall be issued except to—duly licensed and bonded master plumber and no master plumber shall do any work until he has applied for and obtained a permit."

They also admitted,

> "that under the provisions of chapters 82 and 83—the licensing of a master plumber is unnecessary (R. 38)"

The petitioner was seeking an injunction to stop the respondents from refusing to issue permits to him, and to declare the entire Chicago Plumbing Code unconstitutional (R. 30-31). The respondents filed a motion to strike the complaint which must be done under section 45 or 48 of

the Civil Practice Act of Illinois, (S.H.S. Chapter 110, Sections 169 and 172 resp.) and under section 45, they must point out specifically the defects complained of, which appear on the face of the complaint, which they did not do, as they attacked Count I in general terms (R. 48) which practice has been condemned by both the Illinois Supreme and Appellate Courts (*Farmer* v. *Alton Building and Loan Assn.*, 294 Ill. App. 206, *Crosly* v. *Weil*, 383 Ill. 538, *Barzonowski* v. *Highland Park State Bank*, 371 Ill. 412, *People* v. *Old Second Nat. Bank of Aurora*, 347 Ill. 640, and many others).

However, a question of mootness should come under section 48 of the Civil Practice Act and would require an affidavit, and in this case there was no affidavit and the motion was not even affirmed (R. 48-49-50).

It is obvious that the Lower Court, the Appellate Court and the Illinois Supreme Court have all ignored the law promulgated by all of the higher courts to sustain a motion that was worthless, and the Illinois Supreme Court has said,

> "A judgment pronounced without judicial determination of the facts—is wanting in due process of law. (*Hultberg* v. *Anderson*, 252 Ill. 607, *Burket* v. *Reliance Bank and Tr. Co.*, 367 Ill. 196.)"

and there can be no question about the fact that there was no determination of the facts in this case by anyone. The petitioner has never been able to get plumbing permits and is out of business because he can not get them, without a determination of any facts and without a legal motion being filed to attack the complaint.

II.

The questions raised by the respondents are not appropriate to the issue before this court and this Court has jurisdiction and it is properly pleaded.

While the respondents refuse to answer the issues raised by this petitioner, the petitioner will answer them, by stating that this court in the cases quoted under the clause covering jurisdiction in the petitioner's Brief, in particular as to the case of *Craig* v. *Harney*, 331 U. S. 567, say that this court will look to see that the complainant has had a fair trial of the issues in the lower courts of the State, and if he has not, this court will then accept the case and issue the writ of certiorari.

The record is clear that the Appellate Court has attempted to make an injunction suit seeking to destroy illegal legislation into a petition for writ of mandamus to make the City of Chicago issue a license, it could not issue. This was not the case, the petitioner wants plumbing permits without the license, that the city had no authority to issue, and there is no theory in law which would make anyone apply for a license under the State law which is in conflict with the Constitution and laws of the United States.

The record does not show, that the Corporation Counsel argued that all the petitioner had to do was to apply for the license and he would get one, and that the court said it was not going to aid the petitioner to break the plumbers license law; because of the reasons set forth in the petitioner's brief page 14.

But that was the case, and as the petitioner told the lower court judge, and as it turned out, when the petitioner did apply for a master plumber's license he was handed the same application that has been used since 1936

against his. Thus, the statement of the respondents that he must make another attack on the same illegal ordinance, which has the same identical words, chapter and paragraph numbers, is an attempted fraud on this court. The petitioner will get his permits without a license as the law so provides.

III.

The provisions of the State and City licensing laws, which control the issuance of plumbing permits have the same identical objectionable features condemned by the Illinois Supreme Court in 1950.

As stated in the statement of the case, (Pet. Br. 6 and 7) a certain application blank furnished by the City must be used in order to take the examination for a master plumber's license. The exact wording in part of Chapter 162-3 is, (see R. 27)

> "The applicant shall present his application—on the printed form provided by the Board—"

That is the *"joker"* which permits the political combine; that maintains the illegal legislation to violate the Sherman act and the 14th amendment; to say who shall and who shall not be a master plumber in Illinois, and in particular in the City of Chicago. This petitioner must get two master plumbers to certify he was a journeyman plumber. He can not be a master plumber without the consent of the master plumbers now licensed, and that was the reason the Illinois Supreme Court said that the law of 1935 was unconstitutional (*People* v. *Brown*, 407 Ill. 565).

The statements of the respondents that the law was changed is true as to insignificant items, but not as it affected the basic ruling of the Illinois Supreme Court in the case of *People* v. *Brown* (407 Ill. 565) as the ruling of the Honorable DeWitt Crowe shows (R. 88).

However, this is not as important as the fact that in making the motion to strike the respondents admitted all the facts set forth in the complaint, in the record on pages 42 to 46 inc. As this court will perceive the Honorable DeWitt Crowe is only reiterating the admittance of the respondents, that the Illinois Plumbing License Law of 1951 was unconstitutional, which the Illinois Supreme Court and the Appellate Court, would not look at, which refused to hear, is a violation of the 14th amendment.

Point I of the Brief filed in both the Appellate and Supreme Courts, when this same case bore the number 45959 and 42227 respectively, should decide the issue in this court. There was an admittance that the Illinois plumbing license law was unconstitutional, there was an admittance that the City of Chicago could not license, hence the petitioner should have been in the plumbing business but he was not because he could not obtain permits, and no court would aid him to get those permits by the issuance of an injunction. This petitioner is truly a victim of the Anarchy that exists in Illinois, where the law is subordinate to the political ambitions of some of the judges or the refusal of one judge to overrule his associate to aid a layman.

IV.

The Illinois Supreme Court has now ruled, for others, that the Illinois Plumbing License Law of 1951 is invalid for the reasons set forth in the petitioner's complaint but the respondents are still enforcing the same illegal provisions of the Act against this petitioner.

Since the page proofs in this Brief were prepared the Illinois Supreme Court on June 16, 1953 has ruled that the Illinois Plumbing License Law of 1951 is null and void for the reasons complained of in this petitioner's complaint. However the respondents are still enforcing the

provisions of the same Act against this petitioner making false and untrue statements in the Court, where a new action was started to prevent them from so doing on March 28, 1953.

The judge to whom it was sent to assign it instanter; in violation of sections 2 and 19 of Article II of the State Constitution and the 14th Amendment is still asking the respondents to maintain the City Plumbing Code which maintains the monopoly for the Master Plumbers who take their orders from the Local Plumbers Union. The state of anarchy insofar as it affects this petitioner and the Chicago Plumbing Code still exists.

CONCLUSION.

This petitioner has maintained his fight against the illegal plumbing license laws in Illinois since 1936 because he believes that the United States should not be controlled by labor Hoodlums, using illegal legislation, to achieve illegal objectives.

It is unfortunate that the men who represent the People of the State of Illinois, do not believe as he does and will indulge in untrue statements, sharp practice and deliberate frauds, including the breaking of the laws of Illinois to keep illegal legislation in force.

However, that is the case here. No Court or member of the Corporation Counsel's office that had anything to do with the past and present litigation involving the illegal Chicago Plumbing Code, has the intestinal fortitude to tell the alliance of crime and politics in Chicago, controlled thru labor organizations by their aid to the so-called Italian Bloc, that Chapters 162, 82, 83 and others com-

prising the Chicago Plumbing Code are in conflict with and create a condition obnoxious to the Constitution and laws of the United States, which is the truth.

They will however, say the petitioner is incoherent, that he is insulting a judge by telling the truth, and they have attempted to raise a fraudulent issue in this court to keep illegal legislation in force. The writ of certiorari should be issued forthwith, so that the alliance between crime and politics, supported by Hoodlum labor union dollars, will know that this court will aid a layman in his fight for all the people of the United States. This is a basic issue, the right of the people to be heard on just complaints, without counsel, when they are being hurt by illegal laws promoted, again and again, for special interests, which was denied this petitioner, because politics and crime are allied in Chicago, and Judges are appointed by the politicians.

Respectfully submitted,

EUSEBIUS JAMES BIGGS,
Petitioner.